

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISSOURI STATE COUNCIL 72,)	
AFSCME,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. R 86-014
)	
CITY OF JEFFERSON,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Missouri State Council 72, AFSCME, of a Petition for Certification as Public Employee Representative of certain employees of Jefferson City, Missouri. A hearing was held on May 6, 1986, in Jefferson City, Missouri, at which representatives of Council 72 and the City of Jefferson were present. The case was heard by State Board of Mediation Chairman Mary Gant. Upon agreement by the parties, a record of the hearing was submitted to employer member Milton O. Talent, and employee member Charles Yaeger for decision. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The City of Jefferson has established several departments to administer city business. Those departments include: police, fire, finance, transportation, planning and

code enforcement, and public works. Each department head reports directly to the city administrator who in turn reports to the mayor and city council. The City, by ordinance, has promulgated rules and regulations applicable to all city employees. Any recommended changes in the rules and regulations which would affect personnel matters are generally introduced to the city council by the city administrator who receives input from each of the department heads. The city administrator handles all personnel matters including hiring, firing, suspension and other disciplinary matters. Such actions, however, are generally initiated by a department head who makes recommendations to the city administrator.

Administrative Secretaries: There are six administrative secretaries employed by the City of Jefferson, assigned to assist the following officials: city administrator, chief of police, director of finance, fire chief, director of transportation, director of planning and code enforcement, and director of public works.

The administrative secretary assigned to the city administrator, in connection with her general secretarial duties, deals with documents pertaining to personnel matters. The secretary keeps track of personnel evaluations, seeing that the city administrator reviews the recommendations and then transmits the information to the finance department. In her position, the administrative secretary has access to all evaluation forms made and all disciplinary actions taken throughout the City. Should the city administrator dictate a memo concerning his preliminary opinion concerning a personnel matter, the secretary would have access to this information. As secretary to the city administrator, she has access to personnel files of all city employees in that the ultimate authority to hire, fire and promote employees rests with the city administrator.

The administrative secretary to the director of finance is one of nine employees working in the finance department. The administrative secretary receives all work assignments from the finance director. There are no other secretaries in the department. The administrative secretary performs general secretarial duties which

include receiving all incoming mail. Testimony indicated that in the past the administrative secretary was privy to confidential information passed among the department heads concerning the firefighters union negotiations. However, since the union-organizing efforts of other city employees, including the administrative secretaries, the director has restricted her access to memos concerning labor relation matters. Now the department heads hand deliver any labor relations memos personally so as to prevent access by the administrative secretary.

The director of finance is closely involved in preparing the budget for the City. In preparing the overall budget, the individual departments prepare their own proposed budgets and transmit them to the finance director. Those proposed budgets are transferred into a computer. The administrative secretary has access to the computer terminal and thus has access to information concerning proposed hours, wages and benefits projected for employees. This preliminary information is available only to the city administrator and mayor, except that each department head is aware of their own projected figures concerning hours and wages.

The administrative secretary handles all personnel action forms that are submitted to the finance department. She types the forms which are used for salary increases, merit changes or new hires. Although at the hearing the administrative secretary maintained that she had no access to the information on the personnel action forms other than when it involved a change in pay, the finance director testified that approximately 75% of the personnel action forms included evaluations of the involved employee made by their supervisor and are thus seen by the administrative secretary.

The administrative secretary for the director of transportation is the only employee performing secretarial duties in that department. The secretary's office is located in the same room where all files are stored. She is in charge of filing all papers, including personnel action forms, and has access to performance evaluations of other employees. This administrative secretary types the records of any pre-disciplinary

hearings before they are submitted to the city administrator. If an employee within the department is considered for a merit raise, the administrative secretary will type the personnel action form after the evaluation is completed. This evaluation includes the director's recommendation as to whether the merit raise is warranted.

The administrative secretary of the department of transportation is also involved in preparing the department's budget. The supervisors in each division of the department of transportation submits figures to the secretary, which include wages and other personnel costs.

The director of public works also has an administrative secretary. Besides performing general secretarial duties, this employee completes all personnel action forms, whether involving promotion, demotion, merit increases, or disciplinary actions. The secretary maintains in her office the personnel files of all employees within the department, making additions or deletions on said files as ordered by the director. Like the other administrative secretaries, she is involved in the preparation of the operation budgets of all three divisions within the department of public works. During the budget preparation, the administrative secretary has access to information concerning the director's projections as to merit increases anticipated during the fiscal year.

The administrative secretary assigned to the fire chief handles all correspondence received by or generated from the fire department. She has access to all personnel matter including grievances filed by the union, the departmental response, and any disciplinary actions taken. Further, if any confidential memoranda are transmitted from the fire chief's administrative secretary.

Absent from the record is any substantial and competent evidence concerning the duties of the administrative secretary of the police chief, and director of planning and code enforcement.

Maintenance Supervisors: There are four maintenance supervisors who work for the Jefferson City Street Department, which is under the control of the director of public

works. The maintenance supervisor reports directly to the street superintendent. There are approximately 33 employees classified as maintenance workers I and II who work under the maintenance supervisors. The superintendent decides what jobs need to be done throughout the city and assigns a crew of five to eight maintenance workers to the maintenance supervisor. After receiving their job assignments at the shop, the crew proceeds to the location where work is needed. The maintenance supervisor has no authority to assign more men to his crew. At the job site, the maintenance supervisor is in charge of his crew and is responsible for seeing that the job is done in a workmanlike manner. The individual jobs assignments of the maintenance workers are determined by the maintenance supervisor before they leave the shop. The record clearly shows that the maintenance supervisors work alongside their crew members, shoveling asphalt, cutting trees or doing any other work necessary.

The maintenance supervisors play no role in the hiring, firing or promotion of other employees. The maintenance supervisor's role in the grievance procedure is limited. An informal chain of command exists concerning any grievance a maintenance worker might have. The employee may speak to the maintenance supervisor or go directly to the street superintendent or his assistant. Final authority concerning such matters rests with the street superintendent. The maintenance supervisors' role in disciplinary matters is also limited. Testimony adduced at the hearing indicated that a maintenance supervisor who had over 15 years of experience in his position had never disciplined or made any recommendations concerning the discipline of another employee. The maintenance supervisor has no authority to issue a written reprimand concerning another employee. Should a problem arise, the maintenance supervisor would report the incident to the superintendent. For instance, if an employee refused to do a particular job, the maintenance supervisor would see that the work was done himself and then report the problem to the street supervisor, who has final authority concerning discipline.

Dispatcher: The City of Jefferson employs one person as a dispatcher. His primary job is to assign the bus drivers to their various routes throughout the city. The dispatcher works under the direction of the director of transportation and the transit chief of that department. There are approximately eight full time drivers and eight part-time drivers directed by the dispatcher. On a typical day, the dispatcher arrives at work at approximately 6:00 a.m. and is in charge until the transit chief arrives at 6:45 p.m. Although the dispatcher has the authority to assign or reassign employees to different buses, such decisions are routine in nature and require the use of little independent judgment or discretion. If a bus driver fails to appear for work, the dispatcher has the authority to call in another employee to fill in. Concerning disciplinary actions involving bus drivers, the dispatcher has the authority to recommend disciplinary action to his supervisors. The record does not indicate if any disciplinary action has been taken upon the recommendation of the dispatcher.

Fire Training Officer: The City of Jefferson employs one person in the position of fire training officer who works with the fire department. The fire training officer's primary function is to instruct firefighters concerning fire fighting methods and tactics. The training officer consults with the fire chief as to what subjects should be taught and is allowed much discretion in determining the contents of the training sessions. After each subject is taught, the training officer usually tests the firefighters concerning the material, either with practical drills or oral questioning. The training officer then tallies the scores and submits a list to the chief concerning how well each firefighter has done on the test. Said test results are used in the chief's decisions concerning promotion of the firefighters. In addition to his training duties, the fire training officer assists in the preparation of the fire department budget in connection with training costs which include the necessary allotments for sending firefighters to school and the scheduling of programs.

CONCLUSIONS OF LAW

Council 72 has petitioned to be certified as public employee representative of a bargaining unit comprised of certain workers employed by the City of Jefferson. The parties have agreed that certain employees listed in Joint Exhibit 1 attached hereto are to be included in the appropriate bargaining unit. However, in dispute are four classifications listed on that exhibit, namely: maintenance supervisor, dispatcher, administrative secretary and fire training officer.

The City contends that the maintenance supervisors and dispatcher are supervisory employees and, therefore, should be excluded from the bargaining unit. The issue before the Board concerning those employees is whether they are supervisors to be excluded from the unit in that the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Firefighters Association, Local 73, v. City of St. Louis, Case No. 76-113 (SBM 1976); see, Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977). To determine the appropriate bargaining unit as it concerns the maintenance supervisors and dispatchers, the Board must determine whether they are in fact true supervisors. In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily

supervising employees.

- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

Concerning the maintenance of supervisors, the record is clear that they play no role in the hiring, firing or promotion of other employees. They have no authority to assign subordinate employees of their crew. Instead, the street superintendent assigns the maintenance workers to the maintenance supervisor's crew. The record is clear that the maintenance supervisor works alongside the other employees and is more involved in seeing that a job is completed satisfactorily rather than actually supervising his crew members. Without question, the record indicates that the maintenance supervisor is involved primarily with supervising an activity rather than supervising the employees. In view of the foregoing, the Board finds that the maintenance supervisors possess authority analogous to that of a leadsman and not that of a true supervisor and, therefore, should be included in the appropriate bargaining unit.

Similarly, the Board finds that there is insufficient evidence to establish that the dispatcher is a true supervisor. The dispatcher plays no role in the hiring, firing, promotion or transfer of other employees. The dispatcher's authority to assign his drivers to various routes does not, in itself, constitute true supervisory authority. Accordingly, the position of dispatcher shall be included in the appropriate bargaining unit as being a non-supervisory position.

Council 72 contends that the administrative secretaries should be included in the bargaining unit because they share a community of interest with the other employees. Council 72 argues that because Sec. 105.510, RSMo. 1978, does not specifically exclude confidential employees, they should be included in the bargaining unit. This argument clearly ignores Missouri case law to the contrary. It has been held that although Sec. 105.510 uses the word "employees" without additional specificity in

describing the composition of the bargaining unit, the legislature did not intend for all persons on the public payroll to be considered employees for bargaining purposes. See Golden Valley Memorial Hospital District v. State Board of Mediation, 559 S.W.2d 581, 583 (Mo.App. 1977); City of Columbia v. State Board of Mediation, 605 S.W.2d 192 (Mo.App. 1980).

In Missouri National Education Association v. State Board of Mediation, 695 S.W.2d 894 (Mo. 1985) the Supreme Court upheld the Board's decision to exclude as confidential employees certain secretaries working for school administrators and principals. In effect, the court ruled that the confidential employee was not an "employee" under Sec. 105.510 if there exists a confidential relationship between that employee and a managerial or supervisory employee. In the instant case, it is clear that the administrative secretaries not only would be excluded under the Board's ruling in the MNEA case, but would also be excluded under the labor-nexus test applied by the NLRB. That test provides that any employee shall be excluded from the appropriate bargaining unit if the employee acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. In the present case, it is clear that the administrative secretaries work hand in hand with either the city administrator or the department heads who provide valuable input concerning personnel matters. Consequently, the Board rules that the administrative secretaries are confidential employees and, therefore, should be excluded from the unit.

Council 72 argues also that the fire training officer should be included in the unit because he desires to be in the unit and because he was excluded from the firefighters unit. However, the record does not establish that the fire training officer shares a community of interest with any of the other employees within the proposed unit. Instead, the record as a whole indicates that the fire training officer must be considered

managerial employees. As stated in Missouri National Education Association v. Missouri State Board of Mediation, supra at 898, such a managerial employee has duties which involve acting directly or indirectly in the interests of the employer in relation to other employees and formulate, determine or effectuate policies on behalf of their employer. The record in this case indicates that the fire training officer is the second highest paid official within the fire department and has much latitude and discretion in determining all training given to other fire department personnel. The test results tabulated by the training officer are considered by the fire chief for promotions and the training officer assists the fire chief concerning budgetary matters. Consequently, the fire training officer must be considered managerial and, therefore, excluded from the appropriate bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows: all employees listed on Joint Exhibit No. 1 excluding administrative secretaries and fire training officer.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible

to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by Missouri State Council 72, AFSCME.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to Council 72, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 14th day of August, 1986.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
MARY L. GANT, Chairman

/s/ C.J. Yeager 8/5/86
CHARLES YAEGER, Employee Member

/s/ Milton O. Talent 8/13/86
MILTON O. TALENT, Employer Member

**JEFFERSON CITY - PROPOSED BARGAINING UNIT
EXHIBIT 1**

WWTP Operator I

WWTP Operator II

Engineering Technician II

Engineering Technician III

Maintenance Worker I

Maintenance Worker II

Maintenance Supervisor

Motor Equipment Operator I

Motor Equipment Operator II

Animal Rescue Officer

Bus Driver

Senior Parking Enforcement Officer

Parking Enforcement Officer

Dispatcher

Deputy Court Clerk

Purchasing Assistant

Senior Account System Clerk

Accounting System Clerk

Receptionist/Switchboard Operator

License Inspector

Nursery Worker

Housing Inspector Automotive Equipment Mechanic

Automotive Equipment Service Worker

Plumbing Inspector

Parking Attendant
Pumping System Mechanic
Environmental Sanitarian I
Environmental Sanitarian II
Parts Inventory Clerk
Custodial Worker
WWTP Operator Trainee
Demand Responsive Bus Driver
Building Inspector
Electrical Inspector
Traffic & Signal Technician
Secretary